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FISCAL IMPACT STATEMENT

LS 6555

BILL NUMBER: SB 580

NOTE PREPARED: Feb 4, 2013

BILL AMENDED:

SUBJECT: Marijuana.

FIRST AUTHOR: Sen. Tallian

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & local

Summary of Legislation: This bill has the following provisions:

- A. *Inactive Metabolite:* It provides that operating a vehicle with an inactive metabolite of marijuana, hashish, or hash oil in one's body does not violate the impaired driving laws.
- B. *Administrative Actions:* It authorizes the licensed cultivation and production of industrial hemp in accordance with rules adopted by the Department of Agriculture.
- C. *Possession Offenses:* It makes possession of less than two ounces of marijuana a Class C infraction. It makes possession of more than two ounces of marijuana a Class B misdemeanor, and makes the offense a Class A misdemeanor if the person has two or more prior convictions involving marijuana in the past five years. It requires a court to suspend a sentence imposed for possession of marijuana if the person does not have a previous conviction involving marijuana in the past five years, and requires a court to defer a sentence if the person pleads guilty to misdemeanor possession of marijuana.
- D. *Dealing Offenses:* It makes the sale or delivery of more than two ounces of marijuana a Class A misdemeanor, and makes the offense a Class D or Class C felony under certain circumstances. It provides a defense if a person who delivers under ten pounds of marijuana does so for no consideration. It makes the public use or display of marijuana a Class B misdemeanor, and makes the offense a Class A misdemeanor if the person has two or more prior convictions for an offense involving marijuana in the past five years. It reduces the penalty for maintaining a common nuisance to a Class A misdemeanor if the only unlawful controlled substances involved were marijuana, hashish, or hash oil. It allows certain persons convicted of dealing in marijuana as a misdemeanor to participate in a forensic diversion program.
- E. *Controlled Substance Excise Tax:* It repeals the controlled substance excise tax. It also makes conforming amendments.

Effective Date: July 1, 2013.

Summary of NET State Impact: The bill potentially reduces state costs for incarceration by reducing certain felonies to misdemeanors or infractions and by changing the elements of certain crimes. While this may reduce incarceration and monitoring costs for the state, the reduced penalty and the potential reduction in the number of offenders convicted of marijuana-related vehicle crimes could reduce the amount of fine revenue the state receives since the maximum fine for a felony is \$10,000 and \$5,000 for a misdemeanor. Also, reducing penalties from misdemeanors to infractions could redirect fine revenue that is currently deposited into the Common School Fund into the state General Fund

By eliminating the controlled substance excise tax, the bill will very minimally decrease state revenues.

The bill potentially reduces the cause for administrative actions by the Department of Homeland Security by removing marijuana convictions as grounds for denying, suspending, or revoking a certificate or license for providing emergency medical services. Similarly, the bill removes marijuana from the general provisions concerning professional licenses. However, the bill could increase administrative actions for the Department of Agriculture with a new license or permit for growing industrial hemp and harvesting seeds.

Explanation of State Expenditures: *Possession and Dealing Offenses:* This bill reduces the costs to the state if an offender is convicted of a misdemeanor rather than a felony. This is because offenders convicted of a misdemeanor will be housed in a county jail (if they are incarcerated) rather than in a state prison.

The bill does not decriminalize dealing or possession of marijuana, but rather reduces the criminal penalty and increases the quantity comprising the elements of the crime.

In addition, there are felony offenses for which the underlying offense is one of the offenses amended by the bill. If fewer offenders are convicted of the underlying offense, fewer offenders would be sentenced to a state facility. These crimes include corrupt business influence and attempted possession or dealing offenses.

LSA looks at potential savings in two ways:

First, if offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,234 annually, or \$8.86 daily, per prisoner.

Second, the Department of Correction (DOC) pays county sheriffs \$35 per day to house DOC offenders. If these offenders can be housed in DOC facilities instead, the state can save \$35 per day.

DOC reports commitments for marijuana, hash oil, hashish, salvia, and synthetic drugs in the same categories of IC 35-48-4-10 (dealing) and IC 35-48-4-11 (possession). Consequently, the number of offenses for marijuana, specifically, is not reported and not included in the commitments. The following chart assumes that all of the offenders were committed for either marijuana dealing or possession.

Offense	Annual Commitments ¹	Average Sentence (Days)	Estimated Savings (in \$M)	
			County Jails	Marginal Cost
IC 35-48-4-11 Possession Class D felony	345	467	\$2.82	\$0.71
IC 35-48-4-10 Dealing Class C felony	38	1,164	\$0.77	\$0.12
IC 35-48-4-13 Common Nuisance Class D felony	77	571	\$0.77	\$0.19
IC 35-48-4-10 Dealing Class D felony	55	587	\$0.56	\$0.14
IC 35-45-6-2 Corrupt Business Influence Class C felony	11	1,488	\$0.29	\$0.04
IC 35-50-2-10 Habitual Offender Controlled Substance	3	1,687	\$0.09	\$0.01
IC 35-41-5-1 Attempt to Commit Dealing Class C felony	2	1,278	\$0.04	\$0.006
IC 35-41-5-2 Dealing Conspiracy Class C felony	2	954	\$0.03	\$0.006
IC 35-41-2-4 Aid in Possession Class D felony	1	1,095	\$0.02	\$0.003
IC 35-41-5-1 Attempted Possession Class D felony	1	914	\$0.02	\$0.003
IC 35-41-5-2 Dealing Conspiracy Class D felony	1	1,096	\$0.02	\$0.003
IC 35-41-5-2 Possession Conspiracy Class D felony	1	270	<u>\$0.000</u>	<u>\$0.001</u>
Totals	537		<u>\$5.43</u>	<u>\$1.23</u>

¹2008 - 2012 Average Annual Commitments to a State Facility

Inactive Metabolite: If fewer offenders are charged with certain impaired driving offenses because the metabolite of marijuana, hashish, or hash oil in their bodies is inactive, costs for incarceration at both the local and state level could be reduced. Under the bill, an offender would have to have an active metabolite in the person's body rather than an inactive metabolite for the following offenses:

- (A) Impaired driving, a Class C misdemeanor;
- (B) Operating a vehicle while intoxicated causing serious bodily injury, a Class D felony;
- (C) Operating a vehicle while intoxicated causing death, a Class C or Class B felony;
- (D) Operating a vehicle while intoxicated causing death of a law enforcement animal, a Class D felony.

Administrative Actions: No data exists that might indicate how many fewer people may be subject to administrative action as a result of removing marijuana from among the grounds for which a person may have a license or certification suspended, denied, or revoked. If there are fewer administrative actions, administrative adjudication may be reduced, as well. The agencies affected by these changes are the Department of Homeland Security and the Professional Licensing Agency. Changes are made to provisions for teacher's licenses and lifting device operators, as well. However, some marijuana-related convictions are still included in the conditions for these licenses.

Department of Agriculture: The Department of Agriculture (DOAg) may incur minimal increased expenses to adopt rules concerning industrial hemp growers. The DOAg will incur additional expenses to license grower and issue hemp seed production permits and to inspect crops and audit records. The DOAg may revoke or refuse to renew a license or permit. The DOAg may charge growers and handlers a reasonable fee, which may offset some of these additional costs.

Background and Additional Information -

Current offenses concerning marijuana and the proposed changes are detailed in the table below. Under the bill, marijuana would be removed from the existing crimes and a new section established with the following parameters for marijuana offenses. Although marijuana continues to be criminalized, the convictions are more likely to be for misdemeanors, suggesting that the incarceration of offenders would shift from the state to the county.

Current Law	Proposed Changes
Dealing in Marijuana*	
Class A misdemeanor for less than 30 grams**	Class A misdemeanor for knowingly and intentionally delivering, financing delivery, or possessing with intent to deliver more than two ounces of marijuana.
Class D felony for more than 30 grams and less than 10 pounds	Class D felony if for the above offense the recipient is under 18; the amount is more than 2 but less than 10 pounds; or the offender has prior convictions involving delivery.
Class C felony for more than 10 pounds	Class C felony if for the above offense the amount is more than 10 pounds.
Possession of Marijuana*	
Class A misdemeanor for knowingly and intentionally possessing; growing or cultivating marijuana; or failing to destroy marijuana plants	Class C infraction for possession of two ounces or less of marijuana.
Class D felony for more than 30 grams of marijuana or two grams of hash oil, hashish, salvia, or synthetic drug, or if the offender has a prior offense involving one of these substances	Class B misdemeanor for knowingly and intentionally possessing more than two ounces of marijuana. May be a Class A misdemeanor if the person had a prior conviction for an offense involving marijuana in the last five years.
	Class B misdemeanor for displaying, burning, or ingesting marijuana in a public place or on school property. May be a Class A misdemeanor if the person had a prior conviction for an offense involving marijuana in the last five years.
Maintaining a Common Nuisance	
Class D felony	Class A misdemeanor if only unlawful controlled substance involved were marijuana, hashish, or hash oil.
Habitual Offender	
*No change to penalties for hash oil, hashish, salvia, or synthetic drug. **30 grams is approximately 1.05 ounces.	

Explanation of State Revenues: *Possession and Dealing Offenses:* The following table shows the revenue effects of changing certain offenses for dealing and possessing marijuana.

Current Offense	Proposed Change	Revenue Effect
Class D Felony (if less than 2 ounces)	Class A Misdemeanor	Reduces fine to Common School Fund from \$10,000 maximum to \$5,000 maximum.
Class A Misdemeanor possession	Class C Infraction	Maximum fine for Class A misdemeanors is \$5,000 deposited in Common School Fund; Maximum civil penalty for Class C infraction is \$500 deposited into the state General Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee for a felony or misdemeanor offense or the \$70 for an infraction that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$5), judicial salaries fee (\$19), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$2) are deposited into the state General Fund.

Department of Agriculture: The DOAg may receive revenue from reasonable fees charged to growers and handlers. Additionally, the DOAg may impose civil penalties for a violation of a license or permit requirement or condition or a DOAg rule. The civil penalty may not exceed \$2,500, and civil penalties are deposited in the state General Fund.

Controlled Substance Excise Tax: Excise taxes collected annually on controlled substances have been \$200 on average between FY 2009 and FY 2012 and will not have a significant impact on state revenue. The balance in the Controlled Substance Tax Fund on January 24, 2013, was \$2,060.21.

Background: The excise tax is collected based on weight or pill count, depending on the substance. The tax on marijuana is \$3.50 for each gram. Under the bill, all excise tax will be eliminated.

Money in the Controlled Substance Tax Fund may be used to award a person or a law enforcement agency who provides information leading to the collection of controlled substance excise tax. Ten percent of the revenue is to be distributed to the Law Enforcement Training Board to train law enforcement personnel, and up to 20% may be used for administration of the tax.

Explanation of Local Expenditures: *Possession and Dealing Offenses:* The bill will increase costs to incarcerate offenders in the county jail rather than a state facility. Additional options for punishment, such as probation or community corrections, may also increase costs for local units if more offenders are sentenced to these community programs rather than being incarcerated in a state facility. The amount of the increase will depend on the actions of the courts. The average cost per day is approximately \$44.

Background: Doxpop, a repository for court records, reported the number of criminal filings for both marijuana dealing and possession for 79 counties in Indiana between 2010 and 2012. These 79 counties

represent 68% of Indiana's total population.

Felony and Misdemeanor Filings for Marijuana Offenses in 79 Indiana Counties			
Offense	2010	2011	2012
35-48-4-10 Dealing	684	610	686
35-48-4-11 Possession	9,559	9,566	9,940
Grand Total	10,243	10,176	10,626
Source: Doxpop			

Explanation of Local Revenues:

State Agencies Affected: DOC; DOAg; Department of Homeland Security; Professional Licensing Agency, Department of Correction.

Local Agencies Affected: Counties; trial courts, local law enforcement agencies.

Information Sources: DOC. Indiana Sheriffs' Association, Department of Correction; Doxpop.

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